



FILE COPY

Office - Supreme Court

FILED

FEB 20 1938

ELMORE GROH
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. [REDACTED] 8

ZIFFRIN, INCORPORATED,

Appellant,

vs.

JAMES W. MARTIN, COMMISSIONER OF REVENUE OF THE
COMMONWEALTH OF KENTUCKY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF KENTUCKY.

STATEMENT OPPOSING JURISDICTION.

HUBERT MEREDITH,
Attorney General of Kentucky;

HARRY D. FRANCE,
Ass't Attorney General;

WILLIAM HAYES,
Ass't Attorney General;

M. B. HOLIFIELD
Ass't Attorney General;

H. APPLETON FEDERA,
Counsel for Appellees.



INDEX.

SUBJECT INDEX.

	Page
Statement opposing jurisdiction	1

TABLE OF CASES CITED.

	Page
<i>Boise Artesian H. & C. Water Company v. Boise City,</i> 213 U. S. 276, 29 Sup. Ct. Rep. 426	6
<i>Matthews v. Rodgers</i> , 284 U. S. 521, 52 Sup. Ct. Rep. 217	7

STATUTES CITED.

Alcoholic Beverage Control Act of Kentucky, Section 2554b-147	3
Alcoholic Beverage Control Act of Kentucky, Section 2554b-154	3
Motor Transportation Act of Kentucky, Section 2739i-87	2
Motor Transportation Act of Kentucky, Section 2739j-88	2
United States Code, Title 28, Section 379	6



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 695

ZIFFRIN, INCORPORATED,

Appellant,

vs.

JAMES W. MARTIN, COMMISSIONER OF REVENUE OF THE
COMMONWEALTH OF KENTUCKY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF KENTUCKY.

DEFENDANTS' MOTION IN OPPOSITION TO PLAINTIFF'S JURISDICTIONAL STATEMENT.

Filed February 8, 1939.

In this case the plaintiff made application to the Director of the Motor Transportation Department for a hearing on his application for a certificate as a common carrier. The Director denied the certificate.

As the plaintiff felt that his rights were abrogated by the ruling of the Director, his remedy was to appeal to the

Franklin Circuit Court, Frankfort, Kentucky. This right is granted under two sections of the Motor Transportation Act of the Commonwealth of Kentucky. They are as follows:

"SECTION 2739j-87. No new or additional evidence may be introduced in the Circuit Court except as to fraud or misconduct of some person engaged in the administration of this Act and affecting the order, ruling or award, but the court shall otherwise hear the case upon the certified record or abstract thereof, and shall dispose of the case in summary manner, its review being limited to determining whether or not: One. The Commission acted without or in excess of its power; Two. The order, decision or award was procured by fraud; Three. The order, decision or award is in conformity to the provisions of this Act; Four. The finding of facts in issue is supported by any substantial evidence."

"SECTION 2739j-88. The Commission and each party shall have the right to appear in such review proceedings. The court shall enter judgment, confirming, modifying or setting aside the order, decision or award, or, in its discretion, remanding the case to the Commission for proceedings in conformity with the direction of the court. The court may, in advance of judgment and upon a sufficient showing of facts, remand the cause to said Commission. Any party may appeal from the decision of the Circuit Court to the Court of Appeals. Such appeals to the Court of Appeals shall have precedence of other cases pending."

The Franklin Circuit Court was the proper authority to determine the plaintiff's right. The plaintiff then made application to the Alcoholic Beverage Control Board of the Commonwealth of Kentucky. Said Board, as indicated in plaintiff's petition, refused plaintiff a permit to transport liquor within the State of Kentucky. The Alcoholic Beverage Control Board is not permitted under the provi-

sions of the Alcoholic Beverage Control Act to issue a transporter's license to plaintiff unless plaintiff held a common carrier's certificate issued by the Department of Motor Transportation. The section of the Alcoholic Beverage Control Act which is applicable, is as follows:

"SECTION 2554b-154. No person shall become a licensee under this Act, or manufacture, sell, transport, or otherwise traffic in any alcoholic beverages, as that term is defined in this Act, who:

"(7) A Transporter's License as provided for in section 18 (7) of this Act shall be issued only to persons who are authorized by proper certificate from the Division of Motor Transportation in the Department of Business Regulation to engage in the business of a common carrier."

The Alcoholic Beverage Control Act provides that if any person feels that the decision of the Board is improper or erroneous, he may appeal to the Franklin Circuit Court and there have his rights properly adjudicated. The section of the act so providing is section 2554b-147, which is as follows:

"Any order of the Alcoholic Beverage Board refusing a license or revoking or suspending a license may be appealed from by the applicant or licensee, as the case may be, and any order of said Board granting a license or refusing to revoke or suspend a license may be appealed from — any *any* citizen feeling himself aggrieved. The party aggrieved may, within ten days after the entry of the order with which he is dissatisfied, file in the office of the Clerk of the Franklin Circuit Court an attested copy of the order, of all the evidence heard, and of all the steps taken by the said Board relative to the order being contested, provided he shall first post a bond to secure the costs of that action in such sum as may be approved by the Circuit Court, with a corporate surety approved by the Divi-

MICRO CARD

TRADE MARK 

22

39

24
9
4



3
5



sion of Insurance of the Department of Business Regulation as to solvency and responsibility and authorized to transact business in this Commonwealth. The State Board and the licensee or applicant shall be necessary parties to all such appeals. The Circuit Court Clerk shall thereupon docket the case as though it were a petition in equity, and shall immediately issue a summons for said State Board, if the appeal be taken by an applicant or licensee, or a summons for said State Board and the licensee if the appeal be prosecuted by a citizen. Such summons shall be returnable in the same manner as are summonses in equity cases. If the appeal be from an order refusing to grant a license or revoking or suspending a license, it shall be the duty of the State Board, when served with such summons, or of such person as it may designate, to appear and defend the action of the State Alcoholic Beverage Board in refusing to grant or in revoking the license in question. If the appeal be from an order granting a license or refusing to revoke or suspend a license the burden of appearing and defending the action of said Board shall be upon the licensee.

"No formal pleading shall be required in such appeals, but the case shall be set down for a hearing, and such appeals shall in all respects to be expedited as are declaratory judgment suits; after such hearing the court shall enter a judgment sustaining or setting aside the order of the State Alcoholic Beverage Control Board appealed from. No new or additional evidence may be introduced in the Circuit Court except as to the fraud or misconduct of some party engaged in the administration of this Act and affecting the order appealed from, but the Circuit Court shall otherwise hear the case upon the record as attested by the Board, and shall in all respects dispose of the appeal in a summary manner, its review being limited to determining whether or not:

"(1) The Board acted without or in excess of its powers.

"(2) The order appealed from was procured by fraud.

"(3) If questions of fact are in issue, whether or not any substantial evidence supports the order appealed from.

"Any party aggrieved by a judgment of the Circuit Court may appeal to the Court of Appeals in the same manner that appeals are taken under the declaratory judgment act.

"If the appeal be from an order refusing to grant a license, or revoking or suspending a license, the costs shall be taxed against the application or licensee in any event. If the appeal be from an order granting a license or refusing to revoke or suspend a license, the costs shall be taxed against the citizen who, feeling himself aggrieved, has contested the order, in the event that the order of the Board granting the license or refusing to revoke or suspend the license, is sustained. In the event that such order is set aside with direction to the Board to refuse the license or to revoke or suspend the license, the costs shall be taxed against the licensee.

"No order granting a license shall become effective, and no license thereunder shall be issued, until the expiration of ten days after the date of the entry of such order; and if, within said period of ten days, an appeal from said order shall have been filed as provided by this section, then such order shall not become effective until said appeal shall have been finally determined.

"If a license shall be revoked or suspended by an order of the Board, the licensee shall at once suspend all business or other operations authorized under his license, except as provided in section 46 of this Act, though he may file an appeal in the Circuit Court from the order of revocation or suspension, and no court shall have authority to issue an injunction to suspend the operation of an order of revocation or suspension pending an appeal. If upon appeal to the Circuit Court an order of suspension or revocation is upheld, or

if an order refusing to suspend or revoke a license is reversed, and an appeal is taken to the Court of Appeals, no court shall have authority to issue an injunction to suspend the operation of the judgment of the Circuit Court pending the appeal."

It has been a fundamental rule in equity proceedings that an injunction will not lie where the petitioner has an adequate remedy at law. In the light of the appeal granted the petitioner from the rulings of the Director of the Motor Transportation Department and the rulings of the Alcoholic Beverage Control Board, there is an adequate and complete remedy for the plaintiff.

The State, in order to adequately control the transportation of liquor within its boundaries, has very clearly stated that liquor can only be transported by persons or corporations holding certificates to operate as common carriers. The reason for this is that common carriers operate over a designated route; consequently, the revenue officers may police this area and inspect the shipments as they pass certain points.

The restraining order granted by the Federal District Court enjoining the officers of this Court had the effect of staying a proceedings in the Franklin Circuit Court. It is our contention that this is in violation of section 379, of 28 U. S. C. A.:

"The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

The Supreme Court of the United States construed this section in the case of *Boise Artesian H. & C. Water Company v. Boise City*, 213 U. S. 276, 29 Sup. Ct. Rep. 426; and

in the course of the opinion the Court used the following language:

“No court of equity will, therefore, allow its injunction to issue to restrain their action, except where it may be necessary to protect the rights of the citizen whose property is taxed, and he has no adequate remedy by the ordinary processes of the law. It must appear that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury, or, where the property is real estate, throw a cloud upon the title of the complainant, before the aid of a court of equity can be invoked.”

In the case of *Matthews v. Rodgers*, 284 U. S. 521, 52 Sup. Ct. 217, the Court said:

“If the remedy at law is plain, adequate, and complete, the aggrieved party is left to that remedy in the state courts, from which the cause may be brought to this Court for review if any federal question be involved, Jud. Code, p. 237 (28 U. S. C. A., p. 344), or to his suit at law in the federal jurisdiction are present.”

From the rulings in at least two decisions, it is our contention that this petitioner has a complete and adequate remedy in the State courts and if the State courts, after their jurisdiction has been revoked, decided the question and a Federal question is involved, the plaintiff may then have his relief in the Supreme Court of the United States.

Alcoholic liquors being a subject which has been placed within the exclusive control of the States by the provisions of the Twenty-first Amendment and the Webb-Kenyon Act, it is our contention that this is a matter which concerns intrastate commerce, and is a matter which should be before the State courts on appeal from the rulings of the Director

of the Motor Transportation Department and the Alcoholic Beverage Control Board.

Respectfully submitted,

HUBERT MEREDITH,

Attorney General;

HARRY D. FRANCE,

Asst. Attorney General,

WILLIAM HAYES,

Asst. Attorney General;

M. B. HOLIFIELD,

Asst. Attorney General;

H. APPLETON FEDERA,

Attorneys for Defendants.

(354)

